

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL

PLR-144991-07

Date:

May 19, 2008

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

FS 1 =

FS 2 =

New FS 2 =

X =

Y =

Z =

Country X =

State A =

State B =

Date A =

C =

Dear :

This letter is in response to a letter dated September 25, 2007, submitted on your behalf by your authorized representatives, requesting a ruling that the taxpayer be granted consent to revoke an election to treat a contiguous country corporation as a domestic corporation under section 1504(d) of the Internal Revenue Code (the "Code") and, if granted, rulings on the federal income tax consequences of the revocation. Additional information was submitted in a letter dated February 21, 2008 and additional representations were submitted in a letter dated May 14, 2008.

The ruling contained in this letter is predicated upon facts and representations submitted on behalf of the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate parties. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

FACTS

Parent is a State A corporation and the common parent of an affiliated group (the Parent Group) of corporations that file a consolidated federal income tax return on a calendar year basis. Parent owns all the outstanding stock of Sub 1, a State A corporation. Sub 1 owns X percent of the outstanding equity interests in FS 1, a Country X corporation. In addition, Sub 1 owns all the outstanding equity interests in Sub 2, a State B corporation. Sub 2 owns all the outstanding interests of Sub 3, a State B corporation. Sub 3 owns the remaining Y percent outstanding equity interests in FS 1.

Sub 1 owns Z outstanding equity interests in FS 2, a Country X corporation. FS 1 owns the remaining Y equity interests in FS 2. FS 2 is engaged in the C business in Country X.

Parent made an election under section 1504(d) to treat FS 2 as a domestic corporation for all purposes of subtitle A of the Code as of FS 2's date of formation, Date A. Parent requests consent to revoke its election under section 1504(d) which will cause FS 2 to constructively transfer (the "Deemed Transfer") all of the FS 2 assets and liabilities to a Country X corporation ("New FS2") (the "Proposed Transaction").

REPRESENTATIONS

The taxpayer has provided the following representations in connection with its request for a private letter ruling.

- (a) Parent has no plan or intention to include FS 2 or its successor entity in any future federal income tax return filed by the Parent Group (or by another affiliated group with the same common parent or a successor of such common parent).
- (b) Parent will not include FS 2 or any successor entity in any federal income tax return filed by the Parent Group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which FS 2 ceases to be a member of the Parent Group.
- (c) Parent will not make a section 1504(d) election with respect to FS 2 or any successor entity before the 61st month beginning after the revocation of the present section 1504(d) election.
- (d) New FS 2 will continue FS 2's historic business after the revocation of the section 1504(d) election.
- (e) The fair market value of the New FS 2 shares constructively issued upon the termination of the section 1504(d) election will be approximately equal to the fair market value of the FS 2 shares deemed surrendered in the exchange.
- (f) The shareholders of FS 2 will own all the outstanding stock of New FS 2 constructively issued and will own such stock by reason of their ownership of the FS 2 shares immediately prior to the Proposed Transaction.
- (g) Immediately after the Proposed Transaction, New FS 2 will hold all of the assets held by FS 2 immediately prior to the Proposed Transaction except for the assets used to pay expenses incurred in connection with the Proposed Transaction, if any.

(h) The FS 2 liabilities to be constructively assumed (as determined under section 357(d)) by New FS 2 were incurred in the ordinary course of business and are associated with the assets constructively transferred.

(i) There is no plan or intention for New FS 2 to issue any additional stock following the Proposed Transaction.

(j) At the time of the Proposed Transaction, FS 2 will not have outstanding any warrants, options, convertible securities, or other type of right pursuant to which any person could acquire shares in FS 2.

(k) Each party to the transaction will pay its own expenses, if any, incurred in connection with the Proposed Transaction.

(l) FS 2 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(A).

(m) Parent will properly take into account income, or recognize gain, in connection with the revocation of the section 1504(d) election under sections 367(a) and (d) (including section 367(a)(3)(C)), section 987, section 1503(d), section 904(f), and the regulations thereunder, as applicable.

ANALYSIS

Section 1504(d) provides that a domestic corporation, owning or controlling, directly or indirectly, 100 percent of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, may elect to treat such a corporation as a domestic corporation for federal income tax purposes.

Treas. Reg. § 1.367(a)-1T(c)(5) states that section 367(a) applies to the termination of a section 1504(d) election. The revocation of the section 1504(d) election in this case will result in a constructive transfer of all the assets and liabilities of FS 2 to New FS 2, a foreign corporation, in exchange for all of the stock of New FS 2. FS 2 will then be deemed to make a liquidating distribution of all the stock of New FS 2 to Sub 1 and FS 1. Following the termination, New FS 2 will be a Country X corporation that will be treated as a foreign corporation for United States federal tax purposes.

The termination of a section 1504(d) election has collateral consequences under the Code and regulations. The revocation of a section 1504(d) election involves a transfer of the assets of a foreign branch of a United States corporation to a foreign corporation, which is subject to the provisions of sections 367(a) and (d) and the

regulations thereunder. The revocation of a section 1504(d) election will generally trigger gain or loss under section 987 and recapture under section 904(f). The revocation also constitutes a triggering event under Treas. Reg. § 1.1503(d)-6(e)(i) or Treas. Reg. § 1.1503-2(g)(2)(iii)(A), as applicable, requiring the recapture of any dual consolidated losses incurred by a foreign branch of the taxpayer.

RULINGS

Based solely upon the information and representations submitted in the taxpayer's ruling request, we rule as follows:

1. Consent is hereby granted to Parent to revoke the section 1504(d) election to treat FS 2 as a domestic corporation.
2. The revocation shall be effective as of the end of the month of the date of this letter.
3. FS 2 will cease to be a member of the Parent Group at the end of the day on which the section 1504(d) election is revoked.
4. The Proposed Transaction, as described above, will constitute a reorganization within the meaning of section 368(a)(1)(F). Rev. Rul. 87-27, 1987 C.B. 138. FS 2 and New FS 2 will each be "a party to the reorganization" within the meaning of section 368(b).
5. No gain or loss will be recognized by FS 2 on the constructive transfer of its assets to New FS 2. Sections 361(a) and 357(a).
6. No gain or loss will be recognized by New FS 2 on its constructive receipt of the assets from FS 2 in constructive exchange for New FS 2 stock. Section 1032(a).
7. New FS 2's basis in the assets of FS 2 will be the same as FS 2's basis in its assets immediately before the Proposed Transaction. Section 362(b).
8. New FS 2's holding period for each of the assets of FS 2 will include the period during which such asset was held by FS 2. Section 1223(2).
9. No gain or loss will be recognized by FS 2 on the constructive distribution to Sub 1 and FS 1 of the New FS 2 stock. Section 361(c)(1).
10. No gain or loss will be recognized by Sub 1 or FS 1 on the constructive receipt of the stock of New FS 2 in constructive exchange for the stock of FS 2. Section 354(a)(1).

11. The basis of each of Sub 1 and FS 1 in the New FS 2 stock constructively received will be equal to the basis of the FS 2 stock constructively surrendered in exchange therefore. Section 358(a)(1).

12. Sub 1's holding period for the New FS 2 stock constructively received will include the period during which Sub 1 held the FS 2 stock exchanged therefore, provided that the FS 2 stock is held as a capital asset in the hands of Sub 1 on the date of the exchange. Section 1223(1).

13. FS 1's holding period for the New FS 2 stock constructively received will include the period during which FS 1 held the FS 2 stock exchanged therefor, provided that the FS 2 stock is held as a capital asset in the hands of Sub 1 on the date of the exchange. Section 1223(1).

14. The taxable year of FS 2 shall end with the close of the date of the Deemed Transfer, and the taxable year of New FS 2 shall end with the close of the date on which FS 2's taxable year would have ended but for the occurrence of the Deemed Transfer. Rev. Rul. 87-27, 1987 C.B. 138.

15. As provided by section 381(a), New FS 2 will succeed to the tax attributes of FS 2 enumerated in section 381(c), including any FS 2 earnings and profits or any deficit therein.

CAVEATS

Except as expressly provided above, no opinion is expressed, or implied, as to the treatment of the transactions described herein under any provision of the Code and regulations. In particular:

1. No opinion is expressed as to whether, prior to the date of the revocation, FS 2 was formed and at all times maintained solely to comply with foreign law as to the title and operation of property, or whether the section 1504(d) election made with respect to FS 2 was otherwise valid.

2. No opinion is expressed as to how sections 367(a) and (d), section 987, section 1503(d), section 904(f), and the regulations thereunder, apply to the facts described in this ruling.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to the taxpayer's authorized representative.

Sincerely,

David B. Bailey
Assistant to the Branch Chief, Branch 4
Office of Associate Chief Counsel
(International)

Enclosure:
Copy for 6110 purposes

cc: